



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/03213/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 13th March 2015**

**Decision & Reasons
Promulgated
On 25th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**OLADIPUPO TEMILOLUWA LAWAL SOLARIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Van As, Legal Representative of Visa Inn

For the Respondent: Ms E Savage, Home Office Presenting Officer

DECISION AND REASONS

1. This Appellant, Mr Solarin is a citizen of Nigeria whose date of birth is recorded as 22nd April 1985. On 2nd September 2013 he was granted limited leave to remain in the United Kingdom until 13th November 2013. On 11th November 2013, before the expiry of that leave, he made application for variation of his leave but on 23rd December 2013 a decision was made to refuse the application. The application had been made on the basis of long residence pursuant to paragraph 276B (“the ten year Rule”).

2. Not content with the decision of the Secretary of State the Appellant appealed and on 1st October 2014 his appeal was heard by Judge of the First-tier Tribunal Telford sitting at Harmondsworth. Judge Telford dismissed the appeal. He found that the application was deficient in two material particulars. Firstly that the Appellant had not demonstrated that he met the English language requirement pursuant to paragraph 276B(iv) and that in any event the Appellant had established that he had been lawfully resident in the United Kingdom for ten years.
3. By Notice dated 5th December 2014 the Appellant made application for permission to appeal to the Upper Tribunal. There were two grounds. Firstly that Judge Telford had failed to recognise that at the material times the Appellant had the benefit of "3C leave" pursuant to the Immigration Act 1971 Act and as such leave which was capable of being taken into account when calculating a period of lawful residence, and secondly had overlooked the certificates demonstrating that the Appellant in fact did meet the English language requirement. Those certificates appear in the Appellant's bundle and one can only assume that they had been overlooked. For the avoidance of doubt the documents appear in a bundle filed under cover of letter dated 5th March 2014.
4. Ms Savage for the Secretary of State accepts that the Appellant did have the requisite certification and accepts that the Appellant did have the requisite lawful residence. In those circumstances there was nothing for me to resolve. The judge clearly erred but I can deal with this simply by setting the decision aside and re-making it such that the appeal is allowed.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The Decision of the First-tier Tribunal is set aside and remade such that the appeal to the First tier Tribunal is allowed.

Signed

Date 24th March 2015

Deputy Upper Tribunal Judge Zucker

TO THE RESPONDENT **FEE AWARD**

I have heard argument on both sides as to whether or not the award should be made. Whilst I accept that when the application was first made the Appellant did not have the necessary ten years. By the time the matter came before the Tribunal he did and it was open to the Secretary of State in those circumstances to change the decision. That was not done. In the circumstances I make a full fee award.

Signed

Date 24th March 2015

Deputy Upper Tribunal Judge Zucker